

EXHIBIT M



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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3 PHILLIPS, L.G., LCD CO., LTD,)

4)
Plaintiffs,) C.A. No. 04-343(JJF)

5)
v.)

6)
TATUNG CO., TATUNG COMPANY OF)
7 AMERICA, INC., and VIEWSONIC)
CORPORATION,)

8)
Defendants.)

9
Hearing of above matter taken pursuant to notice
10 before Renee A. Meyers, Registered Professional Reporter
and Notary Public, in the law offices of BLANK ROME,
11 LLP, 1201 North Market Street, Wilmington, Delaware, on
Monday, August 13, 2007, beginning at approximately 4:35
12 p.m., there being present:

13 BEFORE: THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

14 APPEARANCES:

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1 MR. KIRK: Good afternoon, Your Honor. This
2 is Richard Kirk from The Bayard Firm for the plaintiffs,
3 LG Phillips, LCD Co., Ltd.

4 With me today on the line are my colleagues
5 from McKenna Long & Aldridge, Lora Brzezynski, who is in
6 North Carolina, I believe.

7 MS. BRZEZYNSKI: That's correct.

8 MR. KIRK: And Rel Ambrozy and Cass
9 Christenson in Washington.

10 MS. GAZA: Your Honor, this is Anne Gaza and
11 Fred Cottrell from Richards, Layton & Finger on behalf
12 of the Tatung defendants.

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13 With me is Frank Merideth, Mark Kreisman,

14 and Valerie Ho.

15 SPECIAL MASTER POPPITI: Thank you very

16 much.

17 MR. HEISMAN: Good afternoon, Your Honor.

18 Jim Heisman from Connolly, Bove on behalf of ViewSonic

19 Corporation.

20 With me on the phone today is Tracy Roman

21 from the Raskin Peter firm in Los Angeles.

22 SPECIAL MASTER POPPITI: Thank you.

23 We have on the agenda only the matters

24 relating to the deposition, proposed deposition of

4

1 Rebecca Rudich. And what I'd like to do, after dealing

2 with that, is to discuss the agenda for, hopefully, on

3 Thursday.

4 What I asked you to do the last time we were

5 together was to supplement what you had already provided

6 to me, and develop the issue on the issue of infectious

7 non-enforceability. You have done that for me and I'd

8 like to talk about that for the moment.

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9 But what I would also like to suggest is,
10 certainly, in reviewing the authorities that all of you
11 have gathered for me, there was no identification, and
12 please correct me if you think I am wrong, of how that
13 doctrine, the applicability of that doctrine to a
14 circumstance where there was, arguably, inequitable
15 conduct occurring as it relates to non-patents-in-suit,
16 even if they are part of the family of patents and
17 relating back; is that a fair statement in terms of
18 finding any case you have presented me with on all fours
19 with that analysis?

20 MS. BRZEZYNSKI: Your Honor, I believe
21 that's correct. We could not locate no authorities --
22 this is Lora Brzezynski by the way, excuse me.

23 SPECIAL MASTER POPPIT: Thank you.

24 MS. BRZEZYNSKI: We could locate no legal

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1 authority for a claim of what's called reverse
2 infectious inequitable conduct. The only cases we were
3 able to locate were cases in which the parent was
4 infected, and then, as a result, continuation patents or

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5 patents that ascended from that patent were then
6 infected.

7 SPECIAL MASTER POPPITI: Any comments,
8 please, with respect to my statement from the
9 defendants, please?

10 MS. HO: Your Honor, that proposition, in
11 general, we believe is correct in that if a patent
12 application was obtained via inequitable conduct on the
13 part of the patentee that that potentially may impact
14 the enforceability of the continuation application.

15 In general, it does not work in the reverse
16 in that inequitable conduct, in connection with the
17 child application, in general, would not impact the
18 enforceability of the parent.

19 Now, having said that, we do believe that
20 there are circumstances under which, under an unclean
21 hands theory, if the inequitable conduct is so broad as
22 to -- as to relate to the entire family of patents, that
23 that may impact the enforceability of the entire family.
24 And we could imagine circumstances in which that would

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1 be possible; for instance, if there was such a pervasive
2 pattern of inequitable conduct in connection with the
3 child, and, in addition to that, there is some
4 relationship between what was claimed in the parent and
5 the child and what was, for example, omitted as prior
6 art, that, in that circumstance, there may be an
7 argument for unclean hands as to why the entire family
8 would not be enforceable.

9 Now, having said that, it was never our
10 position that there was inequitable conduct in
11 connection with the child application, and, as you see
12 in our submission --

13 SPECIAL MASTER POPPIT: Counsel, let me get
14 to that with you in a moment.

15 I just wanted to clear up my understanding
16 of how you view the authority that you all referenced.

17 There is one case that I would like to
18 suggest for everyone's attention. Just give me one
19 moment, please. I want to give you the Federal cite to
20 it and I may have left the actual case sitting in
21 another room. Maybe I didn't.

22 The case is, and I will have to spell it
23 because it's a strange looking, it looks strange in

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24 terms of pronunciation, it's

7

1 R-i-s-t-v-e-e-t-J-o-h-n-s-o-n, Inc., Ristveet-Johnson,
2 versus Brandt, B-r-a-n-d-t, Inc., and, unfortunately, I
3 am going to have to give you, for page purposes, the
4 West Law cite, 1992 West Law 77675, the Northern
5 District of Illinois, 1992.

6 In that case, without getting too much into
7 the specifics of it, as I understand the case, there
8 were six patents originally asserted, three of which
9 were dismissed on motions for summary judgment.

10 The defendant in the case proffered an
11 unclean hands theory, and although it was rejected
12 primarily on analysis of -- on other grounds, for
13 example, the Court found that there was no
14 unconscionable act, and also made the determination that
15 there was no immediate necessary link.

16 As an alternative holding in the case, the
17 Court had the following language, and, unfortunately, I
18 am reading from only, I am reading from "Chism," only
19 because I left the case in another room, the quote and

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20 the footnote in "Chism" -- if you want that reference, I
21 am happy to provide it for you -- The alternative
22 holding was the accused infringer, quote, seems to argue
23 that a party's act of inequitable conduct should reach
24 back in time to cancel any patent protection which might

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1 inure to that party's benefit. No language or policy of
2 the patent act supports such a harsh penalty for
3 inequitable conduct. In the absence of an -- and this
4 is an internal quote -- immediate and necessary, end
5 that quote, link between the allegations of misconduct
6 and the patents-in-suit, this Court cannot presume to
7 apply the unclean hands doctrine.

8 So, I think, notwithstanding the fact that
9 there isn't any analysis of the proposition that is on
10 all fours, if you will, with the facts as I am presented
11 with in this case, it seems that the teaching, to be
12 consistent with what you have provided with me, the
13 teaching wouldn't be inconsistent with the dicta, if you
14 will, of the Ristveet-Johnson case.

15 So, in terms of what I will be considering

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16 today, and I understand that Miss Ho was just about to
17 talk about what the focus is and the focus is not the
18 assertion that there was inequitable conduct with
19 respect to the '701 patent, I thought it was important
20 to bring that case to your attention and suggest I don't
21 believe that it can go backwards that way. Okay?

22 Any questions or comments?

23 MS. BRZEZYNSKI: We reached the, generally,
24 the same conclusion.

9

1 SPECIAL MASTER POPPITI: Okay. Then let's
2 go back, then, and talk about your other positions,
3 please.

4 MS. BRZEZYNSKI: Your Honor, I would like to
5 take the opportunity to comment on Tatung's letter, if I
6 may.

7 SPECIAL MASTER POPPITI: Which one?

8 MS. BRZEZYNSKI: The letter dated August
9 8th, 2007.

10 SPECIAL MASTER POPPITI: I have got it. Go
11 ahead.

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12 MS. BRZEZYNSKI: First, I would like to
13 comment on the section of that letter that references,
14 it's in Section C, that references that Miss Rudich's --
15 or statements about Miss Rudich's activities with
16 respect to the patents-in-suit, quote, appear to be
17 contradicted by LPL's own privilege log, end quote.

18 That statement by Tatung certainly leads the
19 misimpression that Miss Rudich's name is strewn
20 throughout that privilege log and, somehow, she was
21 involved in many, many written communications that were
22 listed there in that -- in the parenthetical exhibit, it
23 says Exhibit C, and then there is a listing of numerous
24 documents there. I don't know the basis for that

10

1 statement or why any of those documents were listed.

2 Certainly, if you look at the privilege log,
3 Miss Rudich's name is not listed on the privilege log
4 with respect to those documents with the exception of
5 two. Her name is listed on the privilege log only with
6 respect to 77 and 83 on that list. And when you look at
7 those documents, they are clearly privileged

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8 communications about the documents that she signed that
9 I alerted you to during our last call.

10 So, the reference that she is involved in
11 numerous communications during the time frame during
12 which the patents-in-suit were being prosecuted is
13 simply incorrect. It's not borne out by the privilege
14 log and it's also not borne out by the facts that we
15 have here.

16 Tatung states that the patents-in-suit were
17 prosecuted from '99 through 2002. I would advise Your
18 Honor that Miss Rudich did not even join our predecessor
19 firm until the end of June of 2000, and, certainly,
20 prior to that time, she was at a different firm and had
21 no involvement, of course, with the prosecution of the
22 patents-in-suit. So I wanted to bring that to your
23 attention.

24 Tatung also attempts to suggest that

11

1 Miss Rudich's prior declaration somehow calls into
2 question the statements that I made with regard to her
3 involvement, limited involvement with the

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4 patents-in-suit.

5 I submit to you that her prior declaration
6 was completely accurate, the work that she was doing at
7 the time she signed that declaration and currently was
8 related to the patents-in-suit, it was related to the
9 continuation application. That's what Miss Rudich has
10 been involved in. We have made no secret of that. She
11 had a very, very limited role in connection with the
12 patents-in-suit as I discussed with Your Honor during
13 the last call.

14 I will also point out that, again, there is
15 another reference to the LG product. I previously
16 advised Your Honor that --

17 SPECIAL MASTER POPPITI: Where is that
18 reference again, please?

19 MS. BRZEZYNSKI: To the LG, Lucky Gold Star
20 LC056N1.

21 Tatung references that product again in its
22 8/8 letter.

23 SPECIAL MASTER POPPITI: Yes, it does.

24 MS. BRZEZYNSKI: And as I represented during

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12

1 our last call, Your Honor, Ms. Rudich was not aware of
2 that product. Tatung also, in its 8/8 letter,
3 references to any C litigation in which that document
4 was apparently produced. It does state that discovery
5 in that case occurred in '99 and 2000. Again, I will
6 reference that Ms. Rudich did not even join the -- our
7 predecessor firm until the end of June, 2000.

8 So, again, Miss Rudich does not have
9 information relevant and should not be subjected to a
10 deposition relating to the patents-in-suit, certainly.

11 I will also note, when looking back at Frank
12 Merideth's, Tatung's July 9th, 2007, e-mail, which was
13 Exhibit 7 to LPL's August 1st letter, Mr. Merideth
14 clearly states, in quote, and I quote, The only subject
15 will be the office action in connection with the '079
16 application related to the IBM color display. That was
17 the only subject of the deposition.

18 And I submit to you that if any deposition
19 is ordered by Your Honor, the deposition should be
20 limited to the continuation application only, but, as I
21 believe we just discussed, since there cannot be any
22 claim of reverse infectious conduct, even a deposition

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23 on the continuation application is irrelevant and should
24 not be permitted.

13

1 SPECIAL MASTER POPPITI: Okay. Thank you.

2 MS. BRZEZYNSKI: Thank you.

3 SPECIAL MASTER POPPITI: Who is going to
4 speak on behalf of Tatung?

5 MR. MERIDETH: This is Frank Merideth, Your
6 Honor.

7 There were 66 references in the privilege
8 log to Ms. Rudich either sending, receiving, or
9 obtaining copies of information concerning, I can only
10 presume, the patents-in-suit.

11 There would be no reason, of course, to
12 include any references in a privilege log to activity
13 that she might have undertaken in connection with
14 another patent, even a continuation patent.

15 MS. BRZEZYNSKI: Your Honor, if I can
16 interject?

17 SPECIAL MASTER POPPITI: I did look at the
18 description of each of those.

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19 MS. BRZEZYNSKI: We logged, on our privilege
20 log, documents from all the continuation applications,
21 Your Honor.

22 MR. MERIDETH: I don't know what the
23 documents refer to because I don't have the documents.
24 I only have the privilege log.

14

1 The privilege log relates to the
2 patents-in-suit, as best I can determine. I can't see a
3 reason why communications that don't relate to the
4 patents-in-suit would be responsive in any way, and
5 there appear to be a number of communications, 66, it
6 appears, many around the date of the office -- of the
7 document that she signed ostensibly on behalf of
8 Mr. Sung.

9 Now, I don't know the circumstances with
10 respect to that, but they are -- it certainly is
11 something that requires inquiry, from my viewpoint, on
12 behalf of my client.

13 Secondly, the issues respecting --

14 SPECIAL MASTER POPPITI: That's my question

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15 with respect to that, Mr. Merideth.

16 MR. MERIDETH: Yes, sir.

17 SPECIAL MASTER POPPITI: It may or may not
18 be that the documents that have been identified in the
19 privilege log will point in the direction of her
20 involvement with the patents-in-suit.

21 If they do, that's one thing. If they
22 don't, then I think our discussion today would be framed
23 differently, would it not?

24 MR. MERIDETH: I agree with that if they

15

1 have listed -- if all the entries on the privilege log
2 do not relate to the patents-in-suit, and, again, I
3 would wonder why they would be included, but if they do
4 not relate to the patents-in-suit, I would agree then
5 the issue would be limited to the manner of her
6 supervision and her practices in connection with the
7 disclosure of information and why she wasn't aware of
8 the Lucky Gold Star module.

9 That is something that I think we have a
10 reason to inquire into. And, of course, when I sent my

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11 letter in July alerting LG that we still needed to take
12 Miss Rudich's deposition, we were unaware of that LG
13 module. That was only identified to us within the last
14 two-and-a-half weeks even though it appears at least
15 somebody from LPL was aware of that module at least in
16 1999 or 2000 when it was produced in the NEC litigation.

17 SPECIAL MASTER POPPITI: And we will get to
18 that in a moment.

19 Let me ask this question: You mentioned the
20 issue of her supervision and the question as to why
21 didn't she know. Help me with that for a moment.

22 If she didn't know, and if you posit for me
23 the reason why she didn't know is because she didn't
24 look, she didn't dig, she didn't do whatever, isn't it

16

1 fair to say that when I am asked, or when the Court is
2 asked to look at inequitable conduct for purposes of
3 framing the issue, you have to look to the question of
4 intent, do you not?

5 MR. MERIDETH: Yes, sir, that's correct.

6 But you also look to the issue of materiality.

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7 SPECIAL MASTER POPPITI: I understand that.

8 MR. MERIDETH: And in this particular

9 instance, you have a situation it isn't as if there was

10 a third party's product that LG and its representatives,

11 its agents, it's a matter of she didn't know that

12 company X had a product that taught rear mounting. In

13 fact, in this case, the product in question is an LGE

14 product if the invention was ostensibly made by LGE

15 employees at a time before the LGE LCD provision was

16 transferred from LGE to LPL.

17 Furthermore, at that time, somebody at LPL

18 knew about the LG module because they produced the

19 schematic of it in connection with the NEC litigation.

20 SPECIAL MASTER POPPITI: Yes.

21 MR. MERIDETH: Now, it is conceivable -- so

22 it seems to me, based upon at least our understanding

23 that, commonly, good patent prosecutors, which we

24 believe Miss Rudich to be, will send out a form letter,

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1 if not a specific inquiry, to their client, saying, What

2 do you know about the prior art, any prior art? And,

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3 indeed, the failure, if there was a failure on the part
4 of LGE or LPL to identify its own product would be very
5 material to the issue of intent.

6 SPECIAL MASTER POPPITI: Okay.

7 MR. MERIDETH: May I finish?

8 SPECIAL MASTER POPPITI: That was our court
9 reporter, Mr. Merideth. I think she just missed your
10 statement. There was some static on the line.

11 MR. MEREDITH: I am sorry.

12 MS. BRZEZYNSKI: I didn't hear his
13 statement, Your Honor.

14 SPECIAL MASTER POPPITI: Do you want to go
15 back, Renee. Maybe it will be helpful by telling
16 everyone where you last heard Mr. Merideth.

17 (The reporter read back as requested.)

18 MR. MERIDETH: It is our belief that patent
19 prosecutors do, in fact, send out letters to their
20 clients. We believe that Miss Rudich, as the supervisor
21 of not only the patents-in-suit but other patent
22 prosecutions at McKenna, will be able to confirm that
23 that is the fact, so we are left with one of two
24 options, either -- well, maybe three: They neglected to

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1 sent out the letter in this case, No. 1; No. 2, even if
2 they sent -- or they sent the letter and LPL decided not
3 to disclose the information that it knew as of 1999 or
4 2000, or they didn't provide the information that they
5 were around in 1999 and 2000, and Miss Rudich, or
6 somebody else in her firm, made the decision not to
7 disclose it to the Patent Office.

8 It seems to me it has to be one of those
9 three things.

10 SPECIAL MASTER POPPITI: Well, you would
11 agree with me that, in this stage of discovery, if I am
12 going to permit the deposition of Miss Rudich, that it
13 ends there in terms of --

14 MR. MERIDETH: Well, I think the answer is
15 that that's correct except as to the inquiry with regard
16 to her representation with respect to front mounting.
17 That certainly is another subject that I believe that we
18 are entitled to pursue.

19 SPECIAL MASTER POPPITI: We will get to that
20 in just a moment.

21 MS. BRZEZYNSKI: Your Honor, may I respond?

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22 SPECIAL MASTER POPPITI: Let me just ask
23 this question: I have to tell you, and I think the
24 record was, I suggested this the last time we were on

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1 record, I had not remembered precisely what
2 Miss Rudich's declaration was, and I now have that in
3 front of me by virtue of the fact that you asked me to
4 re-look at it. And at the time that she filed the
5 declaration, her statement in the declaration was, "I
6 currently participate in direct supervised patent
7 prosecution actively related to the patents-in-suit and
8 involving flat panel display technology. I fully
9 complied," etcetera, etcetera. And then at paragraph
10 four, "For the past several years, I have been a senior
11 partner in charge of day-to-day activities for all of
12 the patent prosecution work. I have and continue to
13 supervise the patent associates in our collection
14 property department who also prosecute patents involving
15 flat panel display technology and who work on patent
16 prosecution actively related to the patents-in-suit."
17 And, of course, it goes on.

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18 I mean, it is certainly appropriate for a
19 Court to rely on counsel before the Court for certain
20 representations.

21 My problem is this: As I am hearing your
22 respective positions, Mr. Merideth is saying, This is
23 what we are now confronted with in light of
24 Miss Rudich's deposition. The circumstances have

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1 changed since we started to discuss a Rudich deposition
2 and what that would be focused on, and notwithstanding
3 the representations made in her declaration and your
4 comments, Miss Brzezynski, the fact remains that you
5 acknowledge that she started with the law firm June of
6 2000. The time frame that I have just listened to takes
7 you to the end of 2000, and having someone being
8 described as hands on, it seems to me in her
9 declaration, why wouldn't it be appropriate to focus on
10 what she did or didn't do for that, whatever period of
11 time that is, six months, three-and-a-half, four months,
12 five months? And maybe the way to at least take it a
13 step further, and I am really not reaching out for

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14 additional work on my desk, but it may be important for
15 me to look at these privilege log documents.

16 MS. BRZEZYNSKI: Your Honor, may I respond?

17 SPECIAL MASTER POPPITI: Yes, please.

18 MS. BRZEZYNSKI: Your Honor, first, I will
19 note that LPL specifically argued to ViewSonic and
20 Tatung that its privilege log should only be limited to
21 the patents-in-suit, but the defendants required that
22 the continuation patent prosecution be logged, and
23 that's why we logged it.

24 So, the privilege log contains numerous

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1 entries, numerous documents on it that are related to
2 the continuation application in which Miss Rudich has
3 been involved.

4 With respect to her declaration, Your Honor,
5 at the time she signed it in 2007 -- you know, let me
6 step back. The patents in suit issued in 2002.

7 SPECIAL MASTER POPPITI: Right.

8 MS. BRZEZYNSKI: The protective order is
9 extremely broad. It says any prosecution activity

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10 relating to flat panel display technology, you know,
11 relating to the patents-in-suit, you can't see the
12 highly sensitive confidential documents.

13 Miss Rudich was very clear in her
14 declaration, because she does prosecution activity
15 related to the patents-in-suit, the continuation
16 application, she cannot see highly confidential
17 documents and she hasn't, and that was context in which
18 she made that statement.

19 And then you have also pointed to the
20 statement that --

21 SPECIAL MASTER POPPITI: I recall that.

22 MS. BRZEZYNSKI: I am sorry. Did I just
23 interrupt you?

24 SPECIAL MASTER POPPITI: I said I certainly

22

1 recall the contents of the declaration.

2 MS. BRZEZYNSKI: Of course, Your Honor.

3 Your Honor also points to the comments made by

4 Miss Rudich that she is a senior partner in charge of

5 day-to-day activities for all the patent prosecution

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6 work. That is also an accurate statement, Your Honor,
7 but there are several partners in our office involved in
8 supervising patent prosecution activity.

9 Certainly, in the year 2000, and we are now,
10 I guess, we are dealing with the six-month period of
11 time in 2000, Miss Rudich was still an associate at that
12 time. She was not even a partner.

13 You know, so, once again, Your Honor --

14 SPECIAL MASTER POPPITI: If what you are
15 saying is that the language in the declaration that
16 references her supervision of patent prosecution
17 activity and the reference in the declaration with
18 respect to her responsibilities as senior partner are
19 not commensurate with what she was doing in June through
20 the end of the year 2000 --

21 MS. BRZEZYNSKI: That's correct, Your Honor.

22 SPECIAL MASTER POPPITI: You did reference,
23 I think, Ms. Brzezynski, you did say to me, in the
24 privilege log, there were two references to Miss Rudich

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2 MS. BRZEZYNSKI: Yes, Your Honor, No. 77 and
3 No. 83. I went through the list that Mr. Merideth had
4 listed in his letter. One relates to the privileged
5 communication. They both have privileged communications
6 with the client relating to the documents that I
7 informed you that she had signed last week, the notice
8 of appeal and the amendment.

9 SPECIAL MASTER POPPITI: So, 77 and 83 are
10 those documents?

11 MS. BRZEZYNSKI: Correct.

12 SPECIAL MASTER POPPITI: Mr. Merideth.

13 MR. MERIDETH: Yes, sir.

14 SPECIAL MASTER POPPITI: I don't know
15 whether there is an application for me to look at the
16 document, and I understand that the declaration is
17 rather frozen at a point in time in the sense it has a
18 begin date and the language reads, "I current
19 participate in," and I now learn, from what I am
20 hearing, that at the time we are focused on, namely,
21 June of 2000 to the end of the year, her duties and
22 responsibilities were different. I am not sure what
23 they were because I haven't asked that question, I am
24 not sure that I want to create that record by putting

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1 Ms. Brzezynski on the line, if you will, as to what her
2 precise responsibilities were.

3 MR. MERIDETH: Of course, we don't know what
4 her responsibilities were. We only know what her
5 declaration says. And as far as the privilege log is
6 concerned, we don't know what the privileged documents
7 say, of course.

8 So, there is only one way, it seems to me,
9 to test what is being represented, and that is to look
10 at the privileged documents, certainly, the ones that
11 bracket the time period in which she signed the two
12 documents. And I don't understand -- Ms. Brzezynski,
13 last time we spoke, at least the gist of what she said
14 was that, my impression of it, was that Miss Rudich was
15 sitting in her office, Sung Jung was unavailable to sign
16 and someone brought it in and said, Hey, would you mind
17 signing this for Sung Jung, which she -- the request she
18 accommodated.

19 Now we find out that there was
20 correspondence with a client about the very documents

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21 that she signed. It doesn't seem to me that it's quite

22 so clear what she did.

23 I was certainly left with the impression,

24 from Ms. Brzezynski, that it was just a professional

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1 courtesy when she signed a document that somebody

2 brought in because the primary author was not available.

3 SPECIAL MASTER POPPITI: Well, let's do

4 this, because I think it's important for this issue to

5 be certainly framed appropriately and decided against

6 the appropriate backdrop. I want to see the

7 documents -- I don't know how long it will take to

8 gather what I am going to be asked to look at, and

9 rather than my going down through each of the documents

10 that were referenced in Tatung's letter of August 8th, I

11 think the most efficient way to approach this is to say

12 to Mr. Merideth, You tell me what documents you want me

13 to be looking at, whether it's the universe of those in

14 the August 8th correspondence or something more lean

15 than that. I will look at those documents just for the

16 purpose of making some determination as to, with respect

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17 to the representations that have been made in the
18 teleconference of last week and today's teleconference.

19 MR. MERIDETH: Well, if the representation
20 is that Miss Brzezynski was not with the firm prior
21 to --

22 SPECIAL MASTER POPPITI: 2000, June of 2000.

23 MR. MERIDETH: -- June of 2000, then it would
24 seem to me --

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1 MS. BRZEZYNSKI: Ms. Brzezynski was, I was
2 at the firm. Ms. Rudich was not.

3 MR. MERIDETH: I am sorry, I miss poke. If
4 Miss Rudich was not in the firm until 2000, and the
5 patents issued in 2002, it seems to me that that sort of
6 brackets the most relevant time period.

7 MS. BRZEZYNSKI: Your Honor, I just want to
8 note for the record my objection to, once again, having
9 to submit privileged documents to Your Honor under seal.

10 SPECIAL MASTER POPPITI: Well, you can note
11 it for the record, and if it's important for me to put
12 something in writing with respect to this path so that

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13 you can bring it to the attention of Judge Farnan, then
14 I certainly can do that, or I will direct that
15 Mr. Merideth, since he is requesting that I do this, I
16 guess at my suggestion, Mr. Merideth, I think it's a
17 fair way to characterize it, I will direct that
18 Mr. Merideth put something in writing so that I can --
19 and have approval as to form only, and you will have,
20 therefore, both a record order and a written order.

21 MS. BRZEZYNSKI: Thank you, Your Honor.

22 MR. MERIDETH: I can do that.

23 SPECIAL MASTER POPPITI: Okay?

24 Let's focus on other issues with respect to

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1 Miss Rudich as well. I do want to bottom line each of
2 the -- the theory with respect to the total application.

3 Mr. Merideth.

4 MR. MERIDETH: Yes. Well, I believe there
5 is also her role with respect to being a supervisor, if
6 she had that role during the relevant time period, what
7 the practices were with regard to requesting
8 information.

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9 SPECIAL MASTER POPPITI: Now, let me ask
10 this question: Would it not make sense to ask that
11 Miss Rudich accomplish a declaration that specifically
12 describe her duties during the appropriate time frame?

13 MR. MERIDETH: Yes.

14 SPECIAL MASTER POPPITI: So if there is no
15 description of supervision, then we are talking about
16 something completely different, are we not?

17 MR. MERIDETH: Yes.

18 SPECIAL MASTER POPPITI: Miss Brzezynski.

19 MS. BRZEZYNSKI: Your Honor, just to make
20 sure I understand, are you proposing that Miss Rudich
21 submit a declaration that describes her duties during
22 the time frame we have been discussing?

23 SPECIAL MASTER POPPITI: Yes.

24 MS. BRZEZYNSKI: I can certainly speak to

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1 Miss Rudich about preparing such declaration.

2 SPECIAL MASTER POPPITI: Okay. Then we will
3 talk about time frame when we conclude.

4 Mr. Merideth, anything else, then, please?

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5 MR. MERIDETH: Well, the issue that we began
6 with, which relates to the '079 application --

7 SPECIAL MASTER POPPITI: Right.

8 MR. MERIDETH : -- that was important to
9 understand what her intentions and meanings were with
10 respect to that representation to the Patent Office.

11 MS. BRZEZYNSKI: Once again, Your Honor, our
12 response is that we have offered a declaration that
13 should be sufficient in that regard as well.

14 In addition, they have the documents that
15 were submitted to the PTO and they can use those
16 documents, if necessary, in their defense during the
17 trial of this case.

18 SPECIAL MASTER POPPITI: Well, yes. I am
19 certainly satisfied that those documents can be used,
20 and I think I don't want to go any further than that
21 until I have in mind what Miss Rudich's responsibilities
22 were during the time frame in question.

23 Do you want to talk to me about the
24 discovery in another case, please?

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1 MR. MERIDETH: Yes. The issue relates to
2 the NEC case and the -- and perhaps this is better
3 covered with the 30(b)(6) deposition issue that's going
4 to be discussed with you on Thursday but --

5 SPECIAL MASTER POPPITI: It may because I
6 did, understanding I wasn't going to have an opportunity
7 to get through that in a great deal of detail, I did
8 take the opportunity to skim it once all the materials
9 were collected, and I think that that may make sense to
10 do that on Thursday.

11 Does anyone disagree? And, Miss Brzezynski,
12 I don't know whether that's going to require you to be
13 interrupted again or to ask that you be interrupted
14 during the course of your vacation or whether somebody
15 else will be dealing with that issue?

16 MS. BRZEZYNSKI: It's my understanding that
17 my colleagues will be handling the argument relating to
18 the 30(b)(6) notice.

19 SPECIAL MASTER POPPITI: Okay.

20 MS. BRZEZYNSKI: I was not planning on being
21 on the call on Thursday.

22 SPECIAL MASTER POPPITI: I don't see any
23 reason for you to be.

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24 MS. BRZEZYNSKI: Thank you.

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1 SPECIAL MASTER POPPITI: Then let's talk
2 about time frame to get these materials to me, that is,
3 the declaration and the privilege log documents.

4 MS. BRZEZYNSKI: Your Honor, can we say
5 Monday of next week?

6 SPECIAL MASTER POPPITI: Mr. Merideth?

7 MR. MERIDETH: That's fine with me, Your
8 Honor.

9 SPECIAL MASTER POPPITI: Okay. That's fine.
10 And if they come in -- I'd like them as early in the day
11 as possible because what I am going to want to do, and
12 we don't have to set the date and time now, I am
13 certainly going to need to circle back on the issue of
14 Rudich at some point.

15 MS. BRZEZYNSKI: Your Honor, when I said
16 "Monday of next week," I am assuming it's the documents
17 that are listed in the letter by Mr. Merideth dated
18 August 8th?

19 SPECIAL MASTER POPPITI: That's the

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20 universe, and if there is agreement to narrow the
21 universe of documents, that's fine.

22 MS. BRZEZYNSKI: Thank you.

23 SPECIAL MASTER POPPITI: Is there anything
24 else, then, on Rudich, please?

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1 MS. BRZEZYNSKI: No, Your Honor.

2 MR. MERIDETH: The only other issue, Your
3 Honor, in response to the argument that the materials
4 that were filed with the Patent Office would suffice, I
5 don't believe that those documents, without
6 cross-examination of Miss Rudich, would suffice because
7 -- because I think I have heard from Miss Brzezynski
8 that the facts are different than those records would
9 indicate, that is, that Miss Rudich did not, in fact,
10 examine a IBM monitor, and, apparently, had some off the
11 record conversation with the PTO at some later date in
12 which she disclosed that fact. There would be no way to
13 have that anywhere in the record without taking her
14 deposition.

15 SPECIAL MASTER POPPITI: It's certainly a

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16 good point. It's one that I raised with respect to
17 whether she had access to a monitor or not just by
18 virtue of the language in the response to the action
19 from the Patent Office.

20 MS. BRZEZYNSKI: I understand, Your Honor.
21 The only documents referenced on the documents submitted
22 to the PTO were the IBM reference document, which is a
23 manual source of diagrams, and the photos, and that is
24 what she had. That is what she communicated to the PTO

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1 in the written document, and that was her intent, and,
2 certainly, that's what she communicated to the examiner.

3 SPECIAL MASTER POPPITI: Would someone
4 remind me of the exhibit where that document is, please,
5 so I can look at it as we are speaking?

6 MR. MERIDETH: I don't have it in front of
7 me. I thought it was Exhibit B.

8 SPECIAL MASTER POPPITI: Exhibit B?

9 MR. MERIDETH: I think it was.

10 SPECIAL MASTER POPPITI: Yes. That's
11 exactly right. The remarks --

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12 MS. BRZEZYNSKI: Exhibit "B" as in boy?

13 SPECIAL MASTER POPPIT: Yes, "B" as in boy.

14 MS. BRZEZYNSKI: The 8/8 letter,

15 Mr. Merideth?

16 MR. MERIDETH: I think the 8/8 letter --

17 MS. BRZEZYNSKI: The 8/1 letter.

18 MR. MERIDETH: Yeah. I think it's also

19 repeated as Exhibit A in the 8/8 letter, if I am not

20 mistaken. It definitely is Exhibit B to the 8/1 letter.

21 SPECIAL MASTER POPPIT: Give me a moment,

22 please.

23 MS. BRZEZYNSKI: I have Exhibit B as the

24 preliminary amendment. I believe it's Exhibit E, as in

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1 Edward to the 8/1 letter.

2 SPECIAL MASTER POPPIT: Exhibit E to the

3 8/1 letter. I have Exhibit E. I am looking for the

4 language that I asked about during our last

5 teleconference.

6 MS. BRZEZYNSKI: Your Honor, I believe it's

7 on Exhibit E, on page 6, it's the language that you

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8 referred to.

9 SPECIAL MASTER POPPITI: Yes. That's

10 exactly right. Thank you very much for doing that.

11 MS. BRZEZYNSKI: Sure. Of course, what's

12 not included here is the disclosure statement to the PTO

13 which listed the photos and the reference diagram as the

14 only two pieces of evidence submitted to the PTO which

15 puts into context that she was referring to the photos.

16 SPECIAL MASTER POPPITI: I don't have that;

17 is that correct?

18 MS. BRZEZYNSKI: That's correct, Your Honor.

19 I believe you do not have it. It has not been

20 submitted.

21 I just wanted to add: It puts into context

22 that she communicated, in writing, at least, that was

23 her intent, that she only had the photos and reference

24 diagrams, she never viewed the physical device, and she

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1 confirmed that to the examiner.

2 SPECIAL MASTER POPPITI: Mr. Merideth, if,

3 in fact, that is the case, how do you respond to that,

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4 that the question that I raised with respect to the
5 language and, in fact, in the physical device, the
6 fixing occurs at the front housing of the IBM 9516, and
7 my concern was that suggested to me that she had the
8 physical device. Now I am being told that the complete
9 document, which identifies what she had, identifies
10 drawings and photographs and not the physical device.

11 MR. MERIDETH: I think what Miss Brzezynski
12 represented in her communication was not that, but that
13 there was a subsequent communication in which an oral
14 communication was made to the Patent Office that she did
15 not have a physical sample.

16 I mean, I don't know what she did, to be
17 honest, but my memory of Miss Brzezynski's submission
18 was that, in fact, there was a subsequent oral
19 communication in which the matter of what she had
20 considered was clarified.

21 MR. KREISMAN: Your Honor, this is Mark
22 Kreisman. I hate to interrupt Mr. Merideth, but from a
23 patent prosecutor's point of view, it would not be
24 uncommon to list photographs of the actual device and

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1 submit them with the IBS as the Patent Office does not
2 accept the submission of the actual device, so it would
3 not be unusual that an actual physical device would not
4 be listed on IBS submitted to the PTO.

5 MS. BRZEZYNSKI: Your Honor, that's what I
6 was turning to, the actual IBS submitted to the PTO, the
7 only information listed were the photos and the
8 reference. There wasn't the products listed at all.

9 MR. KREISMAN: And that's true, Your Honor,
10 and that would be unusual to list the product. It would
11 be a more normal practice to have submitted photographs
12 of a product.

13 SPECIAL MASTER POPPITI: Well, then, how do
14 I read the statement, And, in fact, in the physical
15 device, the fixing occurs to the front housing of the
16 IBM 9516?

17 Mr. Merideth, are you willing to take the
18 representation that she did not have the physical
19 device? That's what we are being told. It may very
20 well be that, were she sworn, she would say that.

21 MR. MERIDETH: I don't know what she would
22 say if she was sworn.

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23 MS. BRZEZYNSKI: She would certainly say
24 that, Your Honor.

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1 SPECIAL MASTER POPPITI: And therein lies
2 dilemma. The fact, in the physical device, I understand
3 that I am -- I am not a patent prosecutor, I am relying
4 on those of you that do patent prosecution, if any one
5 of you is on the phone, and those of you that work with
6 the patent prosecutor, once it gets turned over to
7 litigation, to teach my eyes what that means because
8 that says to me that there is a representation being
9 made to the Patent Office that, during the course of my
10 work, I am representing to the Patent Office that, in
11 the physical device, looking at the physical device.

12 MS. BRZEZYNSKI: As seen to the photos, Your
13 Honor.

14 MR. KREISMAN: Your Honor, as somebody who
15 has prosecuted patents and is registered at the PTO,
16 what I can add to that is it indicates to me that either
17 she saw the actual device or spoke with somebody who has
18 seen or investigated the actual device.

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19 SPECIAL MASTER POPPITI: That's the way the
20 language looks to me. I don't think -- we are all
21 supposed to be careful about our words in our
22 profession, and I would expect that patent prosecutors
23 are supposed to be much more careful in their
24 descriptive words, and that points me right to a

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1 physical object where it certainly doesn't say that I
2 didn't have the product.

3 I still have the concern what that language
4 creates, and it may be that the only way to get
5 clarification of that is with the deposition of
6 Miss Rudich.

7 MR. AMBROZY: Your Honor, it's Rel Ambrozy.
8 In regard to the prosecutions at issue, Miss Rudich's
9 statement whether the pictures aren't the device,
10 itself, she does say the actual device and that device
11 would have been captured in the pictures, but I am also
12 wondering if her statement, even in a declaration,
13 wouldn't have the same effect as if she was sworn in to
14 give the same statement?

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15 MR. MERIDETH: I believe that, in
16 cross-examination, obviously, I am involved with this
17 every day and I think it's very important. We have had
18 a number of different things that have been represented
19 about what Miss Rudich would say, one of which was that
20 there was a subsequent meeting in which she clarified
21 that she didn't have the physical device. We don't know
22 anything about that. That's not set forth in any
23 declaration, proposed declaration, record with the PTO,
24 or anything else.

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1 And if it was so clear, why did she have to
2 make that subsequent clarification? I think that's
3 something that, on behalf of my client, I am obligated
4 to explore.

5 MR. AMBROZY: I will point out that that
6 arose because we had tried to ask Mr. Merideth, several
7 times, about what was wrong with Miss Rudich's
8 declaration --

9 SPECIAL MASTER POPPITI: I understand all
10 the history, but please recall that when we last

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11 convened, and I think I am right in this, that I wanted
12 to focus on that sentence, virtually, the beginning of
13 our discussion, and it wasn't something that was raised,
14 for purposes of that discussion, by Mr. Merideth. It
15 was my concern about it.

16 MS. BRZEZYNSKI: Right. In fact, Your
17 Honor, Mr. Merideth and Tatung never raised that issue
18 with us.

19 SPECIAL MASTER POPPITI: I know. At the end
20 of all this, my responsibility is to make sure whatever
21 gets served up either for the jury or for the Court is
22 designed to search for the truth. That's why I asked
23 the question.

24 So, that's my inclination with respect to

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1 that. I do, however, want to make sure that I have the
2 opportunity to look at her further declaration with
3 respect to her duties back in 2000, for the time frame
4 that we are talking about, and which documents.

5 I think it's going to be very important,
6 expecting that I permit the deposition to go forward, to

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7 ensure that there are appropriate parameters.

8 I know, and we all know, that objections in
9 depositions are more routine than anything unless they
10 deal with privilege, and, yet, I want to make sure if,
11 expecting this deposition goes forward, that an
12 objection that gets outside the framework of what I
13 direct is an appropriate objection, and I will even go
14 so far, for purposes of saying it today, with an
15 instruction not to go further unless you engage me in a
16 telecon. But I do want that other work to unfold so
17 that I can bottom line the whole application as it
18 relates to perspective theories.

19 Is there anything else, then, please?

20 MR. MERIDETH: No, Your Honor.

21 MS. BRZEZYNSKI: No, Your Honor.

22 SPECIAL MASTER POPPITI: I hope you are back
23 to the deck or into the water. Thank you very much,
24 Miss Brzezynski, for taking the time to work while you

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1 are supposed to be relaxing.

2 MS. BRZEZYNSKI: You are welcome, Your

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3 Honor.

4 SPECIAL MASTER POPPITI: I appreciate it.

5 If everyone else would stay on the line, please.

6 MS. BRZEZYNSKI: May I be excused?

7 SPECIAL MASTER POPPITI: Yes. Thank you
8 very much.

9 MS. BRZEZYNSKI: Thank you.

10 SPECIAL MASTER POPPITI: Back to the
11 question with respect to Thursday's work, and I didn't
12 bring this up to this office with me, but let me ask the
13 question: In the submittals dealing with the proposed
14 additional deposition, I think that the attachments, the
15 exhibits, referring me to the subjects that were
16 noticed, I think I am looking at different documents
17 from each of you.

18 MS. ROMAN: Your Honor, this is Tracy Roman.
19 I believe that's probably correct because what ViewSonic
20 submitted today was a revised set of proposed topics.
21 We agreed, during the meet and confer on Friday, to try
22 and find ways to know the topics that originally had
23 been discussed. Those, unfortunately, did not make it
24 to LPL in California in advance of their filing.

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1 SPECIAL MASTER POPPITI: Thank you for that
2 because I had to lay them side-by-side and it was clear
3 to me that there was something going on.

4 MS. ROMAN: Just so the record is clear, the
5 topics have not been served in a notice yet. We were
6 waiting for confirmation that we could actually proceed
7 with the deposition and to try to reach resolution on
8 the other topics.

9 SPECIAL MASTER POPPITI: Then what do you
10 want me to do, collectively, with respect to the
11 submittals, knowing that some of the conversation on
12 paper, if you will, references a much broader advised
13 notice, if you will?

14 MR. CHRISTENSON: Your Honor, as Miss Roman
15 said, we had not received these in advance, so we have
16 not had an opportunity, really, to determine to what
17 extent the new -- the revised proposed topics do or do
18 not narrow the scope of what was originally proposed,
19 and it would be helpful, if possible, for us to get a
20 red-lined version, if you will, that compares the
21 original proposed topics with the new revised proposed

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22 topics so that we can better understand what the current
23 proposed scope is.

24 SPECIAL MASTER POPPITI: Miss Roman, can

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1 that be done?

2 MS. ROMAN: Certainly, Your Honor, I can
3 take on that effort.

4 SPECIAL MASTER POPPITI: Okay. And do you
5 anticipate that there will be, then, a need to fine
6 tune, supplement what you already provided to me?

7 MS. ROMAN: Your Honor, I don't believe so.
8 The truth is that I really don't believe the parties are
9 going to reach any accord on the topics regardless of
10 the modifications we have made. I just don't think,
11 based on our meet and confer, we are going to come to
12 any compromise on them.

13 SPECIAL MASTER POPPITI: Okay.

14 MR. CHRISTENSON: Your Honor, from our view,
15 I -- the answer is I don't know because I am not sure
16 what the comparison looks like. I would be able to
17 address that more specifically once I was able to see

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18 what changes, specifically, there are from the original
19 proposal.

20 SPECIAL MASTER POPPITI: Let me do this: I
21 am not going to foreclose -- because I don't know what
22 the difference is either, not having jumped into them
23 with both feet, I know there is a difference -- if there
24 is a need to provide any supplement, I'd really like it

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1 before close of business tomorrow because I have a
2 commitment outside the office on Wednesday in an
3 argument in another case and I want to make sure that I
4 have those documents -- I have whatever you intend to
5 supplement in my hands before close of business tomorrow
6 afternoon.

7 MR. CHRISTENSON: Yes, Your Honor. And
8 assuming that we get the red-lined today, that should
9 not be a problem and we may or may not need to
10 supplement.

11 SPECIAL MASTER POPPITI: Okay. Then let's
12 talk in terms of time on Thursday. What's the best time
13 for everyone?

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14 MS. ROMAN: Your Honor, we can be available
15 any time on Thursday, keeping, obviously, in mind, the
16 time difference.

17 MR. KREISMAN: Also, I think I should point
18 out, I think Mr. Merideth is also out of the Continental
19 U.S. so we have got a time difference there as well.

20 MR. MERIDETH: Yes, although that's not an
21 insurmountable problem.

22 SPECIAL MASTER POPPITI: I guess it depends
23 on which side of the date line you are on, Mr. Merideth?

24 MR. MERIDETH: I am on this side of the date

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1 line about as far west as you can go.

2 SPECIAL MASTER POPPITI: I hope the waves
3 are good.

4 MR. MERIDETH: There is supposed to be a
5 hurricane on Wednesday, so we will see.

6 SPECIAL MASTER POPPITI: I hope that decides
7 to go in another direction. Why don't we look, then, at
8 3:00 or 3:30 on the 16th? Does that work?

9 MR. CHRISTENSON: That's fine for LPL.

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10 MR. MERIDETH: Yes, sir.
11 SPECIAL MASTER POPPITI: Then let's do 3:30
12 on the 16th.
13 MS. ROMAN: Your Honor, would you like a
14 copy of that red-line as well?
15 SPECIAL MASTER POPPITI: Please. Okay.
16 3:30 on Thursday. Is there anything else, please?
17 MS. ROMAN: Nothing from ViewSonic.
18 MR. CHRISTENSON: No, Your Honor.
19 SPECIAL MASTER POPPITI: Thank you all.
20 MR. CHRISTENSON: Thank you, Your Honor.
21 MR. KIRK: Thank you, Your Honor.
22 (The hearing was concluded at 5:43 p.m.)
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1 C E R T I F I C A T E
2 S T A T E O F D E L A W A R E :
3 ;
4 N E W C A S T L E C O U N T Y :
5 I, Renee A. Meyers, a Registered Professional
Reporter, within and for the County and State aforesaid,

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6 do hereby certify that the foregoing teleconference was
7 taken before me, pursuant to notice, at the time and
8 place indicated; that the teleconference was correctly
9 recorded in machine shorthand by me and thereafter
10 transcribed under my supervision with computer-aided
11 transcription; that the foregoing teleconference is a
12 true record; and that I am neither of counsel nor kin to
13 any party in said action, nor interested in the outcome
14 thereof.

15 WITNESS my hand this 13th day of August A.D.
16 2007.

17

18

19 _____
RENEE A. MEYERS
20 REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 106-RPR
21 (Expires January 31, 2008)

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